

CR-2684 of 2019

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2684 of 2019
Reserved on: 18.07.2023
Date of decision: 09.08.2023

Ashok Kumar

.....Petitioner

vs.

Mamta Rani

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by:

Mr. Bikram Singh, Advocate,
for the petitioner.

Respondent proceeded ex-parte vide order dated 21.11.2022.

NAMIT KUMAR, J.

1. Present revision petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 09.04.2019 (Annexure P-1) passed by the Court of learned Additional District Judge, Panipat, in Civil Appeal No.11 of 2016, whereby application filed by him under Order 41 Rule 27 read with Section 151 CPC for permission to tender documents by way of additional evidence has been dismissed.

2. Brief facts of the case are that marriage between the petitioner and the respondent took place on 19.12.1993. Out of the said wedlock three children were born. After some time of marriage, dispute arose between them and they started living separately. Respondent filed a petition under Section 125 Cr.P.C. in the Court of learned Chief Judicial Magistrate, Sonapat. Petitioner appeared before the Court and filed his

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written statement. Vide order dated 25.09.2008 Chief Judicial Magistrate fixed Rs.2000/- per month as maintenance to be paid by the petitioner to the respondent. On 28.10.2013 respondent filed a petition under Section 127 Cr.P.C. for enhancement of the maintenance amount, which was allowed by the Court of learned District Judge, Family Court, Sonipat, vide order dated 02.12.2015 and petitioner was directed to pay maintenance at the rate of Rs.4,000/- per month i.e. Rs.1600/- per month to the respondent and a sum of Rs.800/- month each to three children with effect from the date of filing of the petition i.e. 28.10.2013 besides litigation expenses of Rs.2200/-. During the pendency of petition under Section 127 Cr.P.C., respondent filed a petition under Section 18 of the Hindu Adoption and Maintenance Act, 1956 on 18.09.2014, which was allowed by the Court of learned Additional Civil Judge (Senior Division), Panipat, vide judgment dated 01.12.2015 and petitioner was directed to pay Rs.5,000/- per month to the respondent as well as to the children from the date of filing of the said petition. Petitioner preferred appeal against the judgment dated 01.12.2015 and also filed application under Order 41 Rule 27 read with Section 151 CPC for permission to lead additional evidence, which has been dismissed by the Court of learned Additional District Judge, Panipat, vide impugned order dated 09.04.2019. Hence, this revision petition.

3. Learned counsel for the petitioner contended that the petitioner was not aware of niceties of law and his previous counsel did not adduce evidence as a result of which maintenance of Rs.5000/- per month has been awarded by the trial Court under Section 18 of the Hindu Adoption and Maintenance Act to the respondent and now the petitioner may be

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permitted to produce the same by way of additional evidence.

4. I have heard learned counsel for the petitioner and perused the record.

5. It may be noted here that in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353*, it has been held by the Hon'ble Supreme Court that notwithstanding the deletion of Order 18 Rule 17-A of CPC, the Court has inherent powers to permit parties to lead additional evidence on such terms as may appear to be just. In the present case, this court is of the considered opinion that ends of justice would be met if one effective opportunity is granted to the petitioner to produce and prove the said documents by way of additional evidence, subject to costs of Rs.5,000/- to be paid to the respondent. However, the respondent shall also be given an effective opportunity to rebut the evidence produced by the petitioner by way of additional evidence, if so required.

6. For the reasons stated above, the impugned order dated 09.04.2019 is set aside. The revision petition is allowed in the aforementioned terms.

09.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No